973.

SUPREME COURT OF THE UNITED STATES.

No. 67.

D. HARDEMAN AND DANIEL P. PERKINS, PLAINTIFFS IN ERROR,

VERSUS

JAMES W. BREEDLOVE AND CO.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST TENNESSEE.

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[*Preamble.*]

District of West Tennessee, to wit:

Pleas before the honorable John McLean and Morgan W. Brown, judges of the seventh circuit of the United States of America, in and for the district of West Tennesssee, at the court-house in the town of Nashville, at the September term of said court, in the year of our Lord one thousand eight hundred and thirty-four, between

James W. Breedlove, and Peter Hardy, merchants, trading under the name and style of James W. Breedlove and Co. plaintiffs, and D. Hardeman and Daniel P. Perkins, defendants. } Parties.

Be it remembered, that heretofore, to wit, on the 5th day of July, in the year of our Lord one thousand eight hundred and thirty-four, a writ of *capias ad respondendum* was issued from the office of the clerk of said court, which is in the words following, to wit:

[*Writ.*]

[L. S.] "The President of the United States of America, to the marshal of West Tennessee district, Greeting:

You are hereby commanded to take D. Hardeman, and Daniel P. Perkins, citizens of the State of Tennessee, if they be found within your district, and them safely keep, so that you have their bodies before the judges of the circuit court of the United States, in the seventh circuit for the district of West Tennessee, at Nashville, on the first Monday in September next, then and there to answer James W. Breedlove and Peter Hardy, merchants, trading under the name and style of James W. Breedlove & Co., citizens of the State of Louisiana, in a plea of trespass on the case to their damage, seven thousand dollars, and have then there this writ. Witness John Marshall, esq., Chief Justice of the Supreme Court of the United States, this first Monday in March, in the year 1834, and of the independence of the United States the fifty-eighth.

J. A. McNAIRY, *Clk.*

[*Endorsements and Marshal's return.*]

Endorsements, to wit: "Issued 5th July, 1834." "Came to hand same day issued. Executed on the 7th July, 1834, and served each of the defendants with a copy of the declaration, and took bail bond.

S. B. MARSHALL, *M. W. T.*"

With the foregoing writ there issued a declaration, which is in the words following, to wit:

[*Declaration.*]

"District of West Tennessee, circuit court United States, September term, 1834.

James W. Breedlove and Peter Hardy, merchants, trading under the name and style of James W. Breedlove & Co. and citizens of the State of Louisiana, by attorney, complain of D.

Hardeman and Daniel P. Perkins, citizens of the State of Tennessee, in custody, &c., in a plea of trespass on the case, &c. For that, whereas, heretofore, to wit, on the first day of September, 1833, in the district aforesaid, in consideration that the said James W. Breedlove & Co. would, at the special instance and request of the said D. Hardeman and Daniel P. Perkins, and for the accommodation of a certain Lemuel Smith, Thomas H. Perkins, William O. Perkins, jr., and Peter Perkins, honor and accept a certain bill of exchange in writing, dated September 1st, 1833, and made and drawn by the said Lemuel Smith, Thomas H. Perkins, William O. Perkins, jr., and Peter Perkins, on the said plaintiffs, whereby the said Lemuel Smith, Thos. H. Perkins, William O. Perkins, jr., and Peter Perkins, requested the said plaintiffs to pay D. Hardeman or order, eight months after date, six thousand dollars, and deliver the same so accepted to the said Lemuel, William O., Peter, and Thos. Hardin, to be negotiated for their own benefit, the said D. Hardeman and Daniel P. Perkins then and there undertook and promised in writing, which said writing is now here shown to the court, to guarantee the payment of the said bill of exchange to the plaintiffs; and the said plaintiffs aver that, confiding in the said promise and undertaking of the said D. Hardeman and Daniel P. Perkins, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, they did accept the said bill of exchange, drawn as aforesaid, and deliver the same so accepted to the said Lemuel, William O., Peter, and Thomas Hardin, to be negotiated for their own benefit; that the time for the payment of the aforesaid bill has long since expired; that no provision was made for the payment of the said bill either by the said Lemuel Smith, Thomas Hardin Perkins, William O. Perkins, jr., and Peter Perkins, or by the said defendants, or any one of them, at the maturity of said bill, or since, but that the plaintiffs were forced, at the maturity of said bill, to advance the money and take up the same, according to the tenor and effect of the acceptance. Yet the said defendants, not regarding their said promise and undertaking, have not as yet paid the said sum of money, or any part thereof, to the plaintiffs, or either of them, but to pay the same or any part thereof, have hitherto wholly neglected and refused, and still neglect and refuse, to the plaintiffs' damage seven thousand dollars; and, therefore, they sue by attorney.

V. P. WINCHESTER.

[*Endorsements on same.*]

Endorsement. "I served each of the defendants, with a copy of the within declaration, 7th July, 1834."

S. B. MARSHALL, M. W. T."

[*Order for defendants to plead, &c.*]

And now, to wit, at the term in the caption mentioned, being the first day of September, 1834, the defendants having failed to enter their appearance herein, and plead to the plaintiffs' said action, it was ordered by the court, that unless they should appear and plead to the plaintiffs said action, on or before the sixth day of September, that a judgment by default would be entered against them.

And afterwards, to wit, on the eighth day of September, 1834, the defendants still failing to appear and plead, the following judgment was entered in said cause, to wit:

[*Verdict and judgment.*]

"The plaintiffs, by attorney, appear, and the defendants make default; thereupon, a jury is called to enquire of damages, to wit, Joseph T. Elliston, Michael C. Dunn, William Williams, William Armstrong, Robert H. McEwen, James Gordon, Robert Gibson, William Nichol, John Thompson, Mimucan H. Howard, Elihu S. Hall, and Joel L. Jones, who, being elected, tried, and sworn, to enquire of damages, say, they assess the plaintiffs' damages at six thousand four hundred and five dollars. Therefore, it is considered, that the plaintiffs recover of the defendants the damages, &c."

[*Motion to set aside verdict and judgment.*]

And afterwards, to wit, on the 12th day of September, 1834, "came the parties, by their attorneys; and the defendants, by attorney, move the court to set aside the verdict and judgment entered in this cause on the eighth instant; which motion, after argument upon the same, is overruled."

And at a subsequent day of said term, to wit, the 19th day of September, 1834.

[*Order granting writ of error.*]

"The defendants, by attorney appear, and pray a writ of error to the Supreme Court of the United States, to be held on the first Monday in January next; and said defendants having given bond and security, as required by law, the same is granted."

Which bond is in the words following, to wit:

[*Bond.*]

Know all men by these presents, that we, D. Hardeman, Daniel P. Perkins, Richard Christmas, and Thomas Hardeman, all of the district of West Tennessee, are held and firmly bound unto James W. Breedlove and Peter Hardy, merchants, trading under the name and style of James W. Breedlove, & Co. in the penalty of twelve thousand eight hundred and ten dollars, for the payment of which, well and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly, severally, and firmly, by these presents. Sealed with our seals, and dated this eighteenth day of September, A. D. 1834.

The condition of the above obligation is such, that whereas a certain action was prosecuted in the circuit court of the United States for the district of West Tennessee, wherein the said James W. Breedlove and Peter Hardy, merchants, &c. were plaintiffs, and the said D. Hardeman and Daniel P. Perkins were defendants; upon the trial of which action, judgment was rendered against the defendants for the sum of six thousand four hundred and five dollars, besides costs of suit, from which judgment the said defendants prayed and obtained a writ of error to the Supreme Court of the United States; now, if the said defendants shall prosecute said writ of error to effect, or answer all damages and costs if they fail to make good their plea, then

the foregoing obligation to be void, otherwise to remain in full force and effect.

(Signed) { D. HARDEMAN, [SEAL.]
DANL. P. PERKINS, [SEAL.]
R. CHRISTMAS, [SEAL.]
THO. HARDEMAN. [SEAL.]

United States of America.
District of West Tennessee, to wit:

[*Clerk's certificate.*]

I, Nathaniel A. McNairy, clerk of the circuit court of the United States for the seventh district of West Tennessee, do hereby certify that the foregoing pages contain a full, true, and complete transcript of the record and proceedings in the cause therein mentioned.

In testimony whereof, I have hereunto set my name, and affixed the seal of said court, this 24th day of October, one thousand eight hundred and thirty-four, and in the fifty-ninth year of our independence.

[SEAL.]

N. A. McNAIRY.

[SEAL.] The United States, seventh circuit,
District of West Tennessee.

To James W. Breedlove and Peter Hardy, merchants, trading under the name and style of James W. Breedlove and Co., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday in January next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the seventh circuit, in the district of West Tennessee, wherein D. Hardeman and Daniel P. Perkins are plaintiffs in error, and James W. Breedlove and Peter Hardy, merchants, trading under the name and style of James W. Breedlove and Co., are defendants, to show cause, if any there be, why the judgment rendered against the said D. Hardeman and Daniel P. Perkins, as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable John McLean, Associate Justice of the Supreme Court of the United States.

JOHN McLEAN.

Davidson county, ss.

On this 20th day of September, in the year of our Lord one thousand eight hundred and thirty-four, personally appeared before me, S. B. Marshall, and being duly sworn, deposeth and saith, that on this day he delivered a true copy of the above citation to James W. Breedlove, a member of the firm above mentioned and one of the plaintiffs.

S. B. MARSHALL.

Sworn to and subscribed before me on the day above written.

N. A. McNAIRY, *Clerk.*

[SEAL.] The United States, ss.

The President of the United States to the judges of the circuit court of the United States, for the district of West Tennessee, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which in the said circuit court, before you or some of you, between James W. Breedlove and Peter Hardy, merchants, &c., trading under the firm and style of James W. Breedlove and Co., plaintiffs, and D. Hardeman and Daniel P. Perkins, defendants, a manifest error hath happened to the great damage of the said Hardeman and Perkins, as by their complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, we command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the *Supreme Court of the United States*, together with this writ, so that you have the same at Washington, on the first Monday of January next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid, being inspected by the said Supreme Court, may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness, the honorable John Marshall, Chief Justice of the said Supreme Court, the first Monday of January, in the year of our Lord one thousand eight hundred and thirty-four, and of the independence of the United States, the fifty-eighth.

N. A. McNAIRY.
Clerk of the Circuit Court, for the District of West Tennessee.

Allowed, Sept. 19th, 1834.

JOHN McLEAN,
Justice Sup. Court, U. S.